

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JAY PAUL KINNEY, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JOSEPH KINNEY,

Respondent-Appellant,

and

CATHERINE RICHTER,

Respondent.

UNPUBLISHED

April 29, 2004

No. 249823

Oakland Circuit Court

Family Division

LC No. 01-657274

In the Matter of JAY PAUL KINNEY, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

CATHERINE RICHTER,

Respondent-Appellant,

and

JOSEPH KINNEY,

Respondent.

No. 249983

Oakland Circuit Court

Family Division

LC No. 01-657274

Before: Talbot, P.J., and Neff and Donofrio, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right from the trial court order terminating their parental rights to the minor child under MCL 712A.19b(3)(c)(i) and (g). Respondents' parental rights to an older sibling, who reached the age of majority during the pendency of this case, are not at issue. We affirm.

We review the trial court's findings of fact for clear error. MCR 3.977(J); *In re Trejo*, 462 Mich 341, 351; 612 NW2d 407 (2000); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). Here, the child was taken into foster care because the family was living in a car. Although respondents asserted that the family lived in a car for less than a week, respondent-father testified that he did not register the child for school because they had no permanent address. The primary condition leading to adjudication was respondents' homelessness as a result of respondent-mother's alleged disability and respondent-father's lack of employment. Respondent-father had no disability that would prevent him from working. During the five months before commencement of this proceeding and the eighteen months of this proceeding, respondents refused to provide documentation or releases pertaining to the nature and extent of respondent-mother's alleged disability. Respondents could not identify specific care-needs that required respondent-father's 'round-the-clock presence, and were unwilling to engage a caretaker to take respondent-father's place. Throughout those two years, respondent-father consistently refused to obtain even part-time employment, even when faced with foreclosure on his home, because of his unverified claim that respondent-mother needed his full-time care. Respondents did not cooperate with FIA workers, and would not sign a parent-agency agreement. Respondent-mother did not communicate directly with FIA workers and, instead, allowed respondent-father to speak for both of them.

This case was replete with personality conflicts from the onset, and it is apparent that respondents became more resistant as the case progressed. Although we recognize that respondents did not cooperate with authorities, there was some basis for their dissatisfaction with the system. Because of FIA staffing problems, respondents were unable to visit the child for nearly three weeks. The FIA placed the child in a home separate from his older sibling, two hours away from respondents, despite indications that the children were distraught as a result of the separation. The referee later limited respondents' visitations to one a month with the comment that it would be "good" for the child to be alone and isolated from his family. We note with disapproval that the referee vented his frustration by referring to respondent-father as a "dead beat."

Being poor, uncooperative, and resistant are not grounds for termination of parental rights, and we view aspects of this case with distress. Nonetheless, the core of the matter is that respondents were unable to provide for their child before this case began and did not demonstrate that they were any more able as time went on. Given respondent-father's thirteen-year history of unemployment and continued resistance to seeking work, there was no reasonable expectation that respondents would be able to provide proper care or custody over the long term. The failure of parents to comply with the requirements of a parent-agency agreement is evidence of their failure to provide proper care and custody for the child. *In re JK*, 468 Mich 202, 214; 661 NW2d

216 (2003). Although respondent-father claimed he had complied with some aspects of the agreement, he was unwilling to verify his compliance. The trial court did not clearly err in finding that there were statutory grounds for termination. *In re Trejo, supra*.

Further, the evidence did not show that termination of respondents' parental rights was clearly not in the child's best interests. MCL 712A.19b(5); *In re Trejo, supra*. Respondents' psychological evaluations indicated that the child's best interests would be served by long-term placement in a home other than theirs. Additionally, the child clearly expressed assent to termination of respondents' parental rights and his preference for the foster home. While it is not permissible to consider the availability and suitability of an alternative home when determining whether there are statutory grounds for termination, it may be relevant to a determination of the child's best interests. *In re Mathers*, 371 Mich 516, 530; 124 NW2d 878 (1963). In this case, the comparison between the foster and parental homes, and the child's preference, took place only at the best interests hearing. The trial court did not err in terminating respondents' parental rights to the minor child.

Respondents also argue that their constitutional rights to due process were violated when the trial court ordered them to comply with parent-agency agreements that were vague and overbroad, and because the trial court based termination solely on a best interests determination. Respondents did not preserve this issue. Unpreserved constitutional issues are reviewed for plain error that affects substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

The trial court engaged in a lengthy discussion with all parties concerning the requirements of the parent-agency agreements. The key requirements were that respondents obtain housing, that respondent-father obtain employment, and that respondents provide documentation of respondent-mother's alleged disability. The requirements were quite specific, and respondents, who were intelligent people under no mental impairments, were very aware of what was required of them. The parent-agency agreements were not vague or overbroad, and the trial court terminated respondents' parental rights because of their failure to demonstrate an ability to provide proper care and custody, and not solely on a best interests determination. No plain error occurred, and respondents' constitutional rights to due process were not violated by either the parent-agency agreements or the termination of their parental rights to the child.

Affirmed.

/s/ Michael J. Talbot
/s/ Janet T. Neff
/s/ Pat M. Donofrio